No. 95-1146

Supreme Court, U.S.
FILED
1996
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In The

Supreme Court of the United States

October Term, 1995

ROSEANN CLARK and JOSEPH CLARK, and INFANT NICHOLAS CLARK and MICHAEL CLARK, by their mother, ROSEANN CLARK,

Petitioners,

vs.

CLARKSTOWN CENTRAL SCHOOL DISTRICT, and HELEN O'CONNOR, individually and in her official capacity as an employee of the CLARKSTOWN CENTRAL SCHOOL DISTRICT, ARCHDIOCESE OF NEW YORK, ST. AUGUSTINE SCHOOL, HELEN BOYCHAK as Principal of St. Augustine School, and as employee of ARCHDIOCESE OF NEW YORK,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS ARCHDIOCESE OF NEW YORK, ST. AUGUSTINE SCHOOL AND HELEN BOYCHAK AS PRINCIPAL OF ST. AUGUSTINE SCHOOL, AND AS EMPLOYEE OF ARCHDIOCESE OF NEW YORK

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QUESTION PRESENTED

Whether the Writ for Certiorari should be denied where the courts below found that Respondents had reasonable cause to believe that infant Petitioners were the victims of child abuse and that the subsequent investigation of Petitioners did not violate any of Petitioners' constitutional rights.

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OPINIONS BELOW

Petitioners, Mr. and Mrs. Clark and their children, Nicholas and Michael Clark, appealed from a judgment of the United States District Court, Southern District of New York. On January 31, 1995, the Honorable Charles L. Brieant, the United States District Judge at the United States District Court for the Southern District of New York, entered an order which granted Respondents' motion for Summary Judgment and dismissed all Federal claims against all Respondents with prejudice, and dismissed the pendent state claims against all Respondents without prejudice.

The United States Court of Appeals for the Second Circuit entered an Order on October 13, 1995, which denied Petitioners' appeal and found that Respondents, having had reasonable cause to believe that Nicholas and Michael Clark were being physically abused by Mr. and Mrs. Clark, did not violate Petitioners' constitutional rights.

The Order and reasoning of the Court of Appeals is set forth in Appendix A of Petitioners' Petition to this Court.

The Judgment of the District Court is set forth in Appendix B of Petitioners' Petition to this Court.

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition of the Case Below

On September 16, 1993, Respondent Sister Helen Boychak ("Sister Helen"), principal of St. Augustine School where infant Petitioners Nicholas and Michael Clark were students, reported a suspected case of child abuse involving the infant Petitioners to the Child Protection Services ("C.P.S."). Sister Helen made

the report because: (1) of information provided by Respondent Helen O'Connor ("Nurse O'Connor"), the school nurse and an employee of Respondent Clarkstown Central School District ("School District"), that abuse had occurred; and (2) of her own training on the procedure to follow when evidence of abuse is presented.

Nurse O'Connor came to Sister Helen on the morning of September 16, 1993, and suggested that Sister Helen phone the C.P.S. to report what she believed to be an instance or instances of child abuse. Specifically, Nurse O'Connor informed Sister Helen that infant Petitioner Nicholas Clark came to school that morning with a black eye, and that this was not the first occasion that she had noticed the Clark children with marks and bruises on their faces. O'Connor, who had been the school nurse since 1981, had been watching the Clark children since one of them came to school with a handprint on his cheek. She had also recorded an instance in March, 1991, when infant Petitioner Michael Clark came to school with a black eye. Based on these particulars, Nurse O'Connor approached Sister Helen and reported her opinion that a child abuse situation existed and that it should be reported.

Sister Helen trusted Nurse O'Connor "explicitly" and believed that she had a reputation for being "a very honest person." Accordingly, Sister Helen relied on Nurse O'Connor's opinion that C.P.S. be called since Nurse O'Connor knew the children longer than Sister Helen, had been at the school longer than Sister Helen, and had observed more than Sister Helen. Both Sister Helen and Nurse O'Connor had been trained in identifying child abuse and in the mandatory reporting procedures once a reasonable suspicion of child abuse existed. Sister Helen's understanding of the procedure was that whenever she suspected child abuse she was mandated by law to report it to C.P.S.

Petitioners, Roseann and Joseph Clark, and their infant children Nicholas and Michael, filed their Original Complaint at Law on December 14, 1992 in the Southern District of New York against the School District and Nurse O'Connor. In the Verified Complaint, Petitioners brought a civil rights action pursuant to 42 U.S.C. § 1983, which also contained pendent state law claims. Jurisdiction over the federal claims was said to exist pursuant to 28 U.S.C. §§ 1331 and 1343(3). The Complaint generally alleged that the School District and Nurse O'Connor's course of action, and the subsequent child abuse investigations of Petitioners, were conducted in bad faith and with wanton disregard of the rights of Petitioners under both the Federal and New York Constitutions, as well as the common law of the State of New York.

On or about April 15, 1993, Respondent School District filed a Third-Party Complaint against Respondents Archdiocese of New York, the St. Augustine School ("St. Augustine School"), Sister Helen, as Principal of the School and employee of the Archdiocese, as well as Third-Party Defendants State of New York, County of Rockland, The Department of Social Services and C.P.S. Subsequently, however, Third-Party Defendant State of New York, County of Rockland and C.P.S. were separated from this action and no longer remain a part of it.

The basis of the federal claims against the School District and O'Connor were that they violated Petitioners' reasonable expectations of privacy as protected by the Fourth, Fifth, Ninth and Fourteenth Amendments to the U.S. Constitution. The claims arose out of the School District and O'Connor's actions in reporting Mr. and Mrs. Clark to C.P.S. These actions, which led to a subsequent investigation of Petitioners by C.P.S., were conducted in concert and under the color of law, and pursuant to official policy. Petitioners nonetheless alleged that the course of action taken by the School District and O'Connor caused

Petitioners severe injuries and damages. Petitioners then alleged that the School District and O'Connor's actions also gave rise to a variety of pendent state law claims.

On August 5, 1994, Respondents St. Augustine School and Sister Helen filed a Motion for Summary Judgment requesting the Third-Party Complaint be dismissed against them. Respondent Nurse O'Connor similarly filed a Motion for Summary Judgment on October 6, 1994, and Respondent School District on October 6, 1994. Petitioners opposed several of the various motions, but specifically failed to oppose St. Augustine School's Summary Judgment motion.

On January 27, 1995, after hearing argument from all sides, the Honorable Charles L. Brieant, District Court Judge of the Southern District of New York, orally granted Respondents' Motions for Summary Judgment and dismissed all federal claims against Respondents with prejudice and dismissed all the pendent state claims against Respondents without prejudice. A written Order was entered in the Office of the Clerk of the Southern District on January 31, 1995.

Petitioners appealed to the United States Court of Appeals for the Second Circuit, which affirmed the Judgment of the Southern District by an Order dated October 13, 1995. The Second Circuit held that Respondents had reasonable cause to believe that infant Petitioners Nicholas and Michael Clark were the victims of child abuse, and that the actions of Nurse O'Connor, Sister Helen and St. Augustine School had not violated the Petitioners' constitutional rights of privacy. It is from the Order of the Second Circuit which Petitioners now move for relief before this Court.

REASONS FOR DENYING THE WRIT

Respondent St. Augustine School submits that this Court should not grant Petitioners' Petition for a Writ of Certiorari for several reasons. Initially, Respondent St. Augustine School respectfully calls to the Court's attention the fact that Petitioners never brought suit against St. Augustine School. The only claims asserted against St. Augustine School were those made by Respondent School District. Petitioners did not oppose the Summary Judgment motion made by St. Augustine School in the District Court. Since Petitioners made reference to St. Augustine School's Summary Judgment motion only in their Notice of Appeal from the Second Circuit Order and Judgment, this Court should recognize that Petitioners never challenged the dismissal of the Third-Party Complaint against St. Augustine School.

Should this Court, however, look beyond this fact, both the District Court for the Southern District of New York and the Court of Appeals for the Second Circuit properly concluded that Respondents had reasonable cause to believe that infant Petitioners Nicholas and Michael Clark were victims of child abuse. Given that school officials and registered nurses are mandated to report incidents of suspected child abuse when such reasonable cause to do so exists, St. Augustine School did not act in bad faith. Accordingly, Respondents' conduct did not violate Petitioners' constitutional rights.

Respondent St. Augustine School further submits that this Court should not exercise its jurisdiction, pursuant to United States Supreme Court Rule 10, 28 U.S.C., to review the Order in question by Writ of Certiorari. First, the Court of Appeals for the Second Circuit's Order was not rendered in conflict with a decision of another United States Court of Appeals on this matter.

Second, the Order does not decide an important federal question in a way which conflicts with the New York State Court of Appeals.

Third, the Second Circuit's Order has not "so far departed from the accepted and usual course of judicial proceedings, or . . . sanctioned such a departure by a lower court, as to call for an exercise of the Supreme Court's power of supervision."

Fourth, since this case was heard in federal court, it does not involve a decision rendered by the New York State Court of Appeals which conflicts with the decision of another state court of last resort or of a United States Court of Appeals. Nor does it involve an important question of federal law which was settled by the New York Court of Appeals which has not been, but should be, settled by this Court, or which conflicts with applicable decisions of this Court.

Finally, in their Petition, Petitioners make several unfounded allegations which are not supported by the record below. For instance, Petitioners contend that it was only after St. Augustine School reported them to the authorities that the handprint on infant Petitioner Michael Clark was recalled by Nurse O'Connor. Both the record below and Petitioners' Statement of the Case in the Writ Petition reveal that this allegation is false. Nurse O'Connor recalled receiving the report regarding the handprint on Michael Clark on September 16, 1991, and St. Augustine School reported Petitioners to C.P.S. on September 17, 1991. (*See* Petitioners' Statement of the Case, Petition for Writ of Certiorari, p.5).

Additionally, in their Petition, Petitioners allege, for the first time, that "[w]ithin a week of Respondent O'Connor's complaint, the entire community in which Petitioners lived knew of the allegations made against them and accepted their truth at

face value." Petitioners also contend that Mr. Clark became the subject of an official internal investigation at his place of employment, the Clarkstown Police Department, and that he was repeatedly "cross-examined" about the child abuse allegations by defense attorneys representing persons whom Mr. Clark arrested. The purpose of the these "cross-examinations" by attorneys, Petitioners allege, was to "damage [Mr. Clark's] credibility." (*See* Petitioners' Statement of the Case, Petition for Writ of Certiorari, pp.13-15).

These contentions are mere speculation. The record is completely silent as to the reaction of Petitioners' community and Mr. Clark's place of employment. Petitioners failed to raise these issues below and cannot now rely on these unfounded allegations to petition this Court for a Writ of Certiorari.

Certiorari, which, unlike appeals, is not a matter of right, "should not be granted except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between courts of appeal." *Rice v. Sioux City Memorial Parks Cemetery, Iowa,* 349 U.S. 70 (1955). Consequently, the Second Circuit Court of Appeals properly denied Petitioners' appeal on the ground that Respondents, having had reasonable cause to believe that infant Petitioners Nicholas and Michael Clark were child abuse victims, did not violate Petitioners' constitutional rights.

CONCLUSION

The writ of certiorari should be denied.

Respectfully submitted,

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